

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

GREENBERG TRAURIG, P.A.,
GREENBERG TRAURIG LLP,

Petitioners,

v.

Civil Action No. 12-cv-6718

FRANCINE GRIESING,

Respondent.

PETITIONERS' MOTION FOR LEAVE TO SUPPLEMENT THE RECORD

Petitioners Greenberg Traurig, P.A. and Greenberg Traurig LLP, by and through their undersigned counsel, respectfully move this Court for an Order granting leave to supplement the record in this matter with the attached Declaration of William H. Jeffress, Jr. and exhibit. The grounds for this Motion are more fully stated in the accompanying memorandum.

February 7, 2013

Respectfully submitted,

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A Professional Corporation

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Respondent.

**PETITIONERS' MEMORANDUM IN SUPPORT OF MOTION FOR LEAVE TO
SUPPLEMENT THE RECORD**

Petitioners Greenberg Traurig, P.A. and Greenberg Traurig LLP, by and through their undersigned counsel, respectfully move this Court for an Order granting leave to supplement the record in this matter with the attached Declaration of William H. Jeffress, Jr. and exhibit. This declaration attaches the transcript of the hearing before Judge William H. Pauley, III on Friday, February 1, 2013, that was referenced in Respondent's Motion for Leave to Supplement the Record (dkt. no. 27, Feb. 4, 2013).

Petitioners respectfully request that this Court grant their Motion for Leave to Supplement the Record with the attached declaration and exhibit.

February 7, 2013

Respectfully submitted,

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Attorneys for Petitioners

CERTIFICATE OF SERVICE

I hereby certify that on February 7, 2013, I caused a copy of the foregoing and its attachments to be electronically filed with the United States District Court, Eastern District of Pennsylvania, and notice will be served by operation of the Court's electronic filing system on representatives of all parties to this litigation.

February 7, 2013

/s/ Scott Bennett Freemann

Scott Bennett Freemann, Esq.

Attorney ID Number 82030

Attorney for Petitioners

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**GREENBERG TRAURIG, P.A.,
GREENBERG TRAURIG LLP,**

Petitioners,

v.

Civil Action No. 12-cv-6718

FRANCINE GRIESING,

Respondent.

ORDER

Upon consideration of Petitioners' Motion For Leave To Supplement the Record, and any opposition thereto, it is hereby:

ORDERED that the motion is GRANTED.

Mitchell S. Goldberg
United States District Judge

Date: _____, 2013

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

GREENBERG TRAURIG, P.A.,
GREENBERG TRAURIG LLP,

Petitioners,

v.

Civil Action No. 12-cv-6718-MSG

FRANCINE GRIESING,

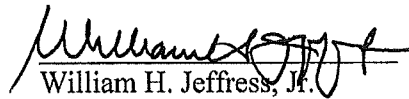
Respondent.

DECLARATION OF WILLIAM H. JEFFRESS, JR.

I, William H. Jeffress, Jr., declare as follows:

1. I am lead counsel in this matter for the petitioners, Greenberg Traurig P.A. and Greenberg Traurig LLP (hereinafter collectively "GT").
2. Attached as Exhibit 1 to this Declaration is a true and correct copy of the transcript of the hearing held before the Honorable William H. Pauley, III, on February 1, 2013, in the case of Griesing v. Greenberg Traurig LLP, 12 CV 8734 (WHP) (S.D.N.Y.).

I swear under penalty of perjury that the foregoing is true and correct.


William H. Jeffress, Jr.

Dated: Feb. 7, 2013

EXHIBIT 1

1

D21VGRIA Argument

1 UNITED STATES DISTRICT COURT
1 SOUTHERN DISTRICT OF NEW YORK

2 -----x

3 FRANCINE FRIEDMAN GRIESING, on
3 behalf of herself and others
4 similarly situated,

5 Plaintiff,

6 v.

12 CV 8734 (WHP)

7 GREENBERG TRAURIG LLP,

8 Defendant.

9 -----x

New York, N.Y.
February 1, 2013
12:20 p.m.

11 Before:

12 HON. WILLIAM H. PAULEY III,

13 District Judge

14 APPEARANCES

15 SANFORD HEISLER

16 Attorneys for Plaintiff

16 BY: DAVID W. SANFORD

17 KATHERINE M. KIMPEL

17 KATIE MUETING

18 PROSKAUER ROSE

19 Attorneys for Defendant

19 BY: BETTINA B. PLEVAN

20 -AND-

20 BAKER BOTTS

21 BY: WILLIAM H. JEFFRESS, JR.

22
23
24
25 SOUTHERN DISTRICT REPORTERS, P.C.
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D21VGRIA Argument

1 (In open court)
2 THE DEPUTY CLERK: Case of Griesing v. Greenberg
3 Traurig.
4 Appearances for the plaintiff.
5 MR. SANFORD: David Sanford for plaintiff
6 Ms. Griesing, your Honor.
7 THE COURT: Good morning, Mr. Sanford.
8 MR. SANFORD: Good morning.
9 MS. KIMPEL: Katherine Kimpel for the plaintiffs.
10 MS. MUETING: Kate Muetting for the plaintiff.
11 THE COURT: Good morning.
12 THE DEPUTY CLERK: Appearance for the defendant?
13 MS. PLEVAN: For the defendant, Bettina Plevan, your
14 Honor.
15 And I'd like to introduce William Jeffress, who's of
16 the District of Columbia.
17 THE COURT: All right.
18 Good morning to both of you.
19 This was to be an initial pretrial conference, but
20 I've heard and received a flurry of letters.
21 Mr. Sanford, do you want to give me a very brief
22 overview of the case?
23 MR. SANFORD: Yes, your Honor. Thank you.
24 THE COURT: The current posture.
25 MR. SANFORD: Your Honor, Ms. Griesing was a
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1 shareholder at Greenberg Traurig from approximately 2007
2 through 2010. She brought claims here in the Southern District
3 of New York; they're individual claims, they're class-wide
4 claims of gender discrimination and pay and promotion. And she
5 also has an individual count regarding retaliation, given her
6 wrongful discharge and constructive discharge.

7 The EEOC in this matter has found reasonable cause to
8 believe that Greenberg Traurig has, in fact, discriminated
9 against both Ms. Griesing and a class of female shareholders.

10 Ms. Griesing filed her class action in the Southern
11 District of New York because GT's CEO -- when I say "GT," I'm
12 talking about Greenberg Traurig's CEO resides here and works
13 here. He issued Ms. Griesing's employment letter here; he
14 conducted her annual reviews here; he terminated her employment
15 in person here; and he makes all promotion and compensation
16 decisions for each of Greenberg's shareholders.

17 After Ms. Griesing filed her complaint here, Greenberg
18 Traurig filed a petition to compel arbitration pursuant to
19 Section 4 of the FAA. Ms. Griesing has moved to dismiss that
20 petition or alternatively have it transferred here.

21 On January 15th of this year, Ms. Griesing filed with
22 this Court an amended complaint adding a claim of declaratory
23 judgment, that she need not arbitrate her Title 7 and EPA
24 claims.

25 Ms. Griesing has asked this Court to hold a pre-motion
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1 conference today, and the Court has agreed to do so.

2 Federal Rule of Civil Procedure 57 authorizes a trial
3 court to order a speedy hearing of a declaratory judgment
4 action; and Federal Rule of Civil Procedure 42(b) authorizes
5 bifurcation of any claims for the convenience or to expedite or
6 economize in an action. The Court clearly has discretion to
7 bifurcate.

8 Each party in this case, your Honor, recognizes that
9 there is a threshold legal matter: Do we litigate in federal
10 court or do we arbitrate. It's that about which we agree. We
11 don't agree on very much else beyond that.

12 THE COURT: Isn't the defendant's proposed motion to
13 compel or motion to stay arbitration before -- in this Court
14 the converse of your proposed motion to bifurcate and decide
15 the declaratory judgment question?

16 MR. SANFORD: We think there's an important legal
17 issue not about staying it and then going to arbitration, but,
18 rather, having before this Court papers so that this Court can
19 decide in the first instance whether, in fact, arbitration is
20 the way to go. We haven't briefed that yet, and what we had
21 provided to this Court is a proposed schedule, an expedited
22 schedule allowing summary judgment on that issue.

23 THE COURT: Isn't that though the same question that's
24 being presented in the Eastern District of Pennsylvania?

25 MR. SANFORD: Well, it is, your Honor. But the

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1 problem with that is this: If Greenberg Traurig is allowed to
2 just go forward under Section 4 of the FAA instead of bringing
3 this before this Court under Section 3, they'll have the right
4 to do that all over the country.

5 This is a class action, your Honor; this is not an
6 individual case. We anticipate filing an amended complaint,
7 adding individuals from around the country. When we do that,
8 if this Court countenances this form of forum shopping by the
9 defendant, then they'll surely be doing that throughout the
10 country, and we'll risk inconsistent adjudications; we'll have
11 multiple actions, some of which may be deemed appropriate for
12 arbitration, some of which may not be.

13 This Court has an opportunity to avoid that by, in one
14 forum, in this forum, resolving that threshold issue for not
15 only Ms. Griesing, but for a class of women she represents.

16 THE COURT: It's not a class action yet.

17 MR. SANFORD: It's not a class action yet; but it's a
18 proposed class action. And we will be amending with other
19 individuals.

20 And if we go down that road, surely we're going to be
21 faced with inconsistent adjudications as a reality possibility;
22 and, at a minimum, we're going to be dealing with the
23 inefficiency of having to resolve this throughout the country
24 in multiple forums.

25 THE COURT: But isn't this issue already fully briefed
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D21VGRIA Argument

1 before Judge Goldberg in the Eastern District of Pennsylvania?

2 MR. SANFORD: Well, this issue is fully briefed.

3 We've asked the Court to transfer here or dismiss it.

4 But what we're asking this Court to do is to allow us
5 to resolve this issue on summary judgment here in an expedited
6 way. We don't know how long the Court is going to take to
7 resolve that issue. The Court hasn't scheduled a hearing yet.
8 We understand that the Court there typically likes to have at
9 least an oral argument. That hasn't been scheduled as of yet.

10 THE COURT: Why shouldn't this Court wait for Judge
11 Goldberg's decision on the motions pending before him?

12 MR. SANFORD: Well, your Honor, the motion pending
13 before the Court isn't substantively briefed. We haven't
14 substantively briefed the issue of arbitration. The only
15 question is whether the Court should allow Greenberg Traurig's
16 motion to proceed, allowing us to then fully brief.

17 What we are asking this Court to do is to give us that
18 expedited schedule here so that we can resolve it here.

19 Plaintiff clearly has the choice of forum. She filed
20 her case in this Court. She has the right to have this issue
21 resolved by this Court. If this Court allows the court in
22 Philadelphia to proceed, it will give countenance to defendants
23 around the country to file related matters after a Title 7 case
24 is properly filed in federal court, file a related matter
25 elsewhere, in an effort to forum shop. And by having this

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1 Court allow that to happen, would send the signal that
2 defendants around the country can do that. And we propose,
3 your Honor, that would not be a good idea.

4 THE COURT: How is that forum shopping, what you've
5 just described?

6 MR. SANFORD: Well, the defendant has every right to
7 make its arguments before this Court under Section 3 of the
8 FAA. They are not prejudiced at all by having that resolved
9 here. But if a Title 7 plaintiff alleging discrimination
10 brings a case in federal court, and defendants think that they
11 can then file a related matter, in this case about arbitration,
12 and have their choice of forum dictate, then it is a form of
13 forum shopping. There's no reason this issue has to be
14 resolved in Philadelphia.

15 THE COURT: But isn't there law that requires a party
16 to file a motion to compel arbitration in the district where
17 the arbitration would take place?

18 MR. SANFORD: Well, our view, your Honor, is that that
19 doesn't -- that is not the law when a case is already pending.

20 If by hypothesis, your Honor, we hadn't filed our case
21 that day, and by hypothesis again, GT had filed its petition to
22 compel arbitration, arguably what your Honor is suggesting
23 would be true. But that's not our situation.

24 Our situation is we filed it first; we have a right to
25 litigate here; we have a right to have this issue heard here.

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1 We're not contesting the idea that they have a right to assert
2 that defense. They can assert that defense, but they need to
3 do that here. And that would be the proper way. Otherwise, it
4 would be a form of forum shopping.

5 THE COURT: All right.

6 Thank you, Mr. Stanford.

7 MR. SANFORD: Thank you, your Honor.

8 THE COURT: Ms. Plevan or Mr. Jeffress?

9 MS. PLEVAN: I'll start, your Honor. And Mr. Jeffress
10 is handling the matter in the Eastern District of Pennsylvania,
11 so he may wish to add some comments to what I would say.

12 THE COURT: Is Mr. Jeffress one of your partners?

13 MS. PLEVAN: No. I apologize.

14 Mr. Jeffress is a partner with Baker & Botts in the
15 District of Columbia.

16 THE COURT: All right. Thank you.

17 MS. PLEVAN: I think our letters make clear, your
18 Honor, that we think that as you've just stated, that the only
19 district in which the firm could have sought to compel
20 arbitration is either Miami or the district in which, in this
21 case, the plaintiff was affiliated, which was the Eastern
22 District of Pennsylvania.

23 And although the cases were filed really on the very
24 same day, this case didn't even raise the issue of arbitration
25 at that time; it was six weeks later. But the firm proceeded

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1 expeditiously; they filed the action to compel, petition to
2 compel arbitration.

3 It's really the plaintiff here who is seeking to
4 change venues and really manipulate the proceedings by asking
5 this Court to, in some way, rule on something that was raised
6 first in the Eastern District of Pennsylvania.

7 We have no reason to think that that proceeding will
8 be delayed. If it is delayed now for a month, it's because the
9 plaintiff interposed a motion to dismiss and to transfer venue.

10 But the cases that we've cited -- and certainly would
11 cite on a motion for a stay -- more extensively make it very
12 clear that we had no choice but to file the petition where we
13 did to compel arbitration. And we could not have done it here.
14 And the issue was not even raised here in this Court. So for
15 that reason, the fact that the plaintiff chose this as her
16 venue for her Title 7 claim and Equal Pay Act claim is simply
17 irrelevant to the process.

18 I also think that the issue of delay is of much less
19 significance here. It's not likely, as I said, to be extensive
20 in any event. But this matter was pending before the EEOC for
21 more than three years. The plaintiff, had she been in a hurry
22 to have her claims adjudicated, could have asked for a
23 right-to-sue letter much earlier. She did not choose to do
24 that.

25 And so I don't think that from an equities standpoint

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D21VGRIA Argument

1 it's appropriate for her to be seeking relief based on the fact
2 that there may be a few more weeks until there is a decision in
3 the Eastern District.

4 I don't think really we need to address the merits of
5 the case now. The EEOC did make a determination at one point
6 in the typical, I guess you would say, fashion of EEOC. They
7 received documents; they never talked to any witnesses; they
8 never met with the attorneys who were representing the firm at
9 the time, but nevertheless issued that determination.

10 But at this point, the EEOC apparently is not
11 interested in proceeding with this case. And we have just Ms.
12 Griesing, a single plaintiff.

13 And so I think for those reasons, your Honor, we would
14 ask that the Court grant us permission to make a motion for a
15 stay of this proceeding pending the outcome of the proceedings
16 pending before Judge Goldberg in the Eastern District of
17 Pennsylvania.

18 THE COURT: All right.

19 MR. SANFORD: Your Honor, if I just may respond
20 briefly.

21 The question really before this Court ultimately will
22 be whether female shareholders at Greenberg Traurig can get a
23 fair resolution of their claims of gender discrimination
24 nationwide heard before this Court or some other court or
25 arbitration.

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1 There is a threshold issue here. And I don't want to
2 argue the merits either, but I just want to point out one
3 matter, your Honor.

4 The EEOC finds reasonable cause to support a finding
5 of discrimination in very, very few cases around the country; I
6 think it's under five percent. They investigated for three
7 years. Greenberg Traurig will have every opportunity to defend
8 itself on the merits down the road. But that is a significant
9 finding.

10 But I would just like to highlight one thing for your
11 Honor before I close, which is that this is a very important
12 issue not because we prefer to be here or they prefer to be
13 there in Philadelphia. It's important because a Title 7
14 litigant has a right of a forum of his or her choice.

15 Ms. Griesing has chosen for good reason to have her
16 case heard here. If Greenberg Traurig is successful in having
17 this Court defer to the Philadelphia court, then the result of
18 that may very well be and probably will be, will have
19 adjudications around the country, many of which will be
20 inconsistent with others, and this process will go on for a
21 long time.

22 This Court has opportunity to resolve this threshold
23 issue either by agreeing it should properly be litigated here
24 or by agreeing with Greenberg Traurig that it should be
25 arbitrated elsewhere. That's something this Court can do in

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Argument

1 its discretion, and we urge this Court to take that upon
2 itself.

3 THE COURT: All right.

4 I still see these motions as essentially presenting
5 the same question, that is, who's going to decide whether the
6 dispute is an arbitrable one or not. And I think it could be
7 handled in just one motion.

8 We'll tee up both plaintiff's motion for bifurcation
9 on the declaratory judgment claim, and the motion to stay the
10 arbitration -- excuse me, to stay this proceeding pending the
11 decision in the Eastern District.

12 So when would you all like to file your motion papers?

13 MR. SANFORD: Your Honor, we have papers ready to be
14 filed today. And if you'd like, we can give you a courtesy
15 copy now and file it with the Court today.

16 MS. PLEVAN: I don't think that's acceptable, your
17 Honor. And I don't see any reason for urgency here, especially
18 in light of the long proceedings. I think if we're having a
19 schedule, it should be the normal schedule.

20 We'd be prepared to file Wednesday, serve papers on
21 Wednesday.

22 THE COURT: That's fine. That's fine.

23 I'm going to tee the motions up so that I'm going to
24 receive papers on both motions. You'll respond to each other.
25 I'll take a short reply, and then schedule an oral argument.

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D21VGRIA Argument

1 MR. SANFORD: Thank you, your Honor.
2 THE COURT: So you'll file your motions next
3 Wednesday, February 6th.
4 When can you oppose the motions?
5 MR. SANFORD: One week, your Honor.
6 THE COURT: Will that work for you, Ms. Plevan?
7 MS. PLEVAN: Yes, your Honor.
8 THE COURT: All right.
9 February 13th.
10 Give me a reply by March 20.
11 MR. SANFORD: February, your Honor?
12 THE COURT: Excuse me, by February 20.
13 And I'll hear oral argument in the case February 28th
14 at 3 o'clock for oral argument.
15 MR. SANFORD: Thank you, your Honor.
16 THE COURT: Will that work?
17 MS. PLEVAN: Just a second.
18 THE COURT: Sure. Let me know if that will be
19 convenient for counsel.
20 MS. PLEVAN: Three o'clock?
21 THE COURT: Yes.
22 MS. PLEVAN: I think we can do that, your Honor.
23 THE COURT: All right.
24 February 28th at 3.
25 MR. SANFORD: Thank you.

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Argument

1 THE COURT: Anything further?
2 MR. SANFORD: That's all for the plaintiff, your
3 Honor.
4 MS. PLEVAN: Thank you, your Honor.
5 THE COURT: All right.
6 Thank you.
7 MR. SANFORD: Thank you very much.
8 THE COURT: Have a good weekend.
9 MR. SANFORD: Thank you. You, too.
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